

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA** :

v. :

**CRIM NO. 10-524**

**SHACOY MCNISH** :

**AGREEMENT**

The United States of America, by its attorneys, Zane David Memeger, United States Attorney for the Eastern District of Pennsylvania, and Mark B. Dubnoff, Assistant United States Attorney for the district, and the defendant, Shacoy McNish, by his attorney, Martin Isenberg, Esquire, hereby enter into the following agreement:

1. At the time of sentencing, the government will move to dismiss Count 15 of the Indictment, charging the defendant with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g).

2. In exchange for the undertakings made by the government in entering this agreement, the defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's convictions on other counts, sentences, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law. This waiver is not intended to bar the assertion of constitutional claims that the relevant case law holds cannot be waived.

a. Notwithstanding the waiver provision above, if the government appeals from the sentences imposed, then the defendant may file a direct appeal of his sentence.

b. If the government does not appeal, then notwithstanding the waiver provision set forth in this paragraph, the defendant may file a direct appeal but may raise only claims that:

- (1) the defendant's sentence on any count of conviction exceeds the statutory maximum for that count of conviction;
- (2) the sentencing judge erroneously departed upward pursuant to the Sentencing Guidelines; and/or
- (3) the sentencing judge, exercising the Court's discretion pursuant to United States v. Booker, 543 U.S. 220 (2005), imposed an unreasonable sentence above the final Sentencing Guideline range determined by the Court.

If the defendant does appeal pursuant to this paragraph, no issue may be presented by the defendant on appeal other than those described in this paragraph.

3. It is agreed that the parties' agreement contains no additional promises, agreements, or understandings other than those set forth in this written agreement, and that no

additional promises, agreements, or understandings will be entered into unless in writing and signed by all parties.

ZANE DAVID MEMEGER  
United States Attorney

Shacy McNish  
SHACOY MCNISH  
Defendant

Peter F. Schenck  
PETER F. SCHENCK  
Chief, Criminal Division  
Assistant United States Attorney

Martin Isenberg  
MARTIN ISENBERG, Esquire  
Counsel for the Defendant

Mark B. Dubnoff  
MARK B. DUBNOFF  
Assistant U.S. Attorney

Date: 7/13/11